



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2004

Mr. S.G. Radcliffe
City Manager
City of Bellmead
3015 Bellmead Drive
Bellmead, Texas 76705-3030

OR2004-8479

Dear Mr. Radcliffe:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 210638.

The Bellmead Police Department (the "department") received a request for all records relating to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other states. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information

¹ Although you raise section 552.108 of the Government Code as an exception to disclosure, you have not provided any arguments explaining how this exception is applicable to the submitted information. Therefore, we find that you have waived this section, and you may not withhold any of the information under section 552.108. *See* Gov't Code §§ 552.301, .302.

disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See id.* at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov’t Code § 411.089(b). Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Likewise, CHRI held by the Texas Department of Public Safety (“DPS”) or another criminal justice agency must be withheld from the public as provided by subchapter F of chapter 411 of the Government Code. Therefore, any CHRI obtained from NCIC or TCIC must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 also encompasses common law privacy. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See* Open Records Decision No. 565 (citing *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), *cf.* Gov’t Code § 411.082(2)(B) (information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy and *Reporters Committee*). In this instance, the requestor asks for all criminal records concerning a named individual. In this case, we believe that the individual’s right to privacy has been implicated. Therefore, with the exception of routine traffic violations which we have marked, where the named individual is a possible suspect, arrestee, or defendant, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

We note that one of the two social security numbers in the remaining submitted information must be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. We also note that under section

552.023 of the Government Code, a person has a special right of access to information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to her social security number pursuant to section 552.023 of the Government Code and it must be released in this instance.

We also note that some of the remaining information is subject to section 552.130 of the Government Code, providing, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the department must also withhold the Texas license plate number and Texas driver's license number we have marked under section 552.130.

In summary, any CHRI obtained from NCIC or TCIC must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code. With the exception of routine traffic violations, where the named individual is a possible suspect, arrestee, or defendant, the department must withhold this information, to the extent that it exists, under common law privacy as encompassed by section 552.101 of the Government Code. With the exception of the requestor's information which must be released, the other social security number may be confidential under federal law. The department must withhold the Texas license plate number and Texas driver's license number we have marked under section 552.130. The department must release all remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

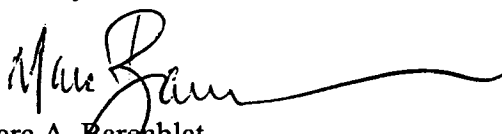
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 210638

Enc. Submitted documents

c: Ms. Wanda Thompson
818 Glenwood
Waco, Texas 76710
(w/o enclosures)